IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revision No.753 of 2005
Date of Decision:April 07,2010

Om Parkash and others .....Petitioners

Versus

State of Haryana .....Respondent

Coram: Hon'ble Mrs. Justice Sabina

Present: Mr.Anhul Singh,Advocate for
Mr.Arshvinder Singh, Advocate for the petitioners.
Mr.H.S.Benniwal, Deputy Advocate
General, Haryana

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Sabina, J.

Petitioners were convicted for an offence under Sections 323,325 148 and 149 of the Indian Penal Code (`IPC' for short) vide judgment dated 1.10.2002 by the Sub Divisional Judicial Magistrate Pehowa. Vide order dated 5.10.2002, petitioners were sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.250/- under Section 323 IPC; they were further sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1000/- under Section 325 IPC and they were also ordered to undergo rigorous imprisonment for a period of six months with a fine of Rs.500/- under Section 148 IPC.However, out of total fine, 3/4th share was ordered to be given to the

complainant and injured in equal shares after expiry of the period of limitation. Aggrieved by the same, petitioners preferred an appeal and the same was allowed qua Dharam Pal and Ravinder and was partly allowed qua accused- Om Parkash, Siri Chand, Pawan Kumar and Sukhvir by the Additional Sessions Judge(Adhoc) Fast Track Court, Kurushetra vide judgment dated 2.4.2005. Accused-Sukhvir was acquitted of the charges under Section 148 and 325 IPC and his conviction was upheld under Section 323 IPC and he was ordered to be released on probation on furnishing personal bond in the sum of Rs.20,000/- with one surety each in the like amount to maintain peace and to be of good behaviour for a period of one year. Accused- Pawan Kumar, Siri Chand and Om Parkash were acquitted of the charge under Section 148 IPC . Hence, the present revision petition.

The brief facts of the case, as noticed by the Appellate Court in paras 2 and 3 of its judgment, are as under:-

> "2. The case of the prosecution, in brief is that on 9.10.1997 ASI Surender Pal alongwith other co-officials was coming back from his illaqa and Manoj Kumar met him near Pehowa Chowk and got recorded his statement to the effect that he is an agriculturist and their land is near Brahmjoni religious place where Moni Baba had constructed their dera where he worshipped. On 5.10.1997, he had gone to dera at about 10.30 p.m. taking meals for his uncle Haridas. Haridas was relaxing in his room after having his meals and he (Manoj) came out side the dera in order to give bread to the dog. In the meantime, Ravinder and Sukhvir came on the dera and Sukhvir raised a lalkara that he be caught. He (Manoj) went

inside the room running and started bolting the room from inside and in the meantime Sukhvir and another person with him started giving jerks to the door and the door was opened. Om Parkash gave an iron rod blow on his mouth and he went inside the inner room. His uncle Haridas also got up and they started giving brick blows. He recognized Om Parkash, Ravinder, Siri Chand, Pawan in electric light. They caused injuries by brick blows, which hit him on various parts of his body and his uncle also sustained injuries. There was nobody at the time of incident. The accused went away after breaking window and had given brick blows to him and his uncle. They came to their house and got themselves medico-legally examined. Om Parkash etc. caused injuries to them because they nursed a grudge since a case pending between them. After recording the statement, ASI Surender Pal made his endorsement on it and sent the same to the police station on the basis of which present case was registered. During investigation, rough site plan of the place of occurrence was prepared, statements of witnesses were recorded and accused were arrested. After completion of investigation, challan was presented in the Court for commencement of trial against the accused.

3. Prima facie, charges under sections 148 and 323,325 read with section 149 of the Indian Penal Code was framed against accused persons to which they pleaded not guilty and claimed trial."

Learned counsel for the petitioners, during the course of arguments, has submitted that the petition qua petitioner No.4-Sukhvir be dismissed as withdrawn.

Ordered accordingly.

Learned counsel for the petitioners has further submitted that he does not challenge the conviction of the petitioners No. 1 to 3 under Sections 323,325 IPC but has submitted that the sentence qua imprisonment may be reduced to already undergone by them. Learned counsel has further submitted that the occurrence in this case had taken place in the year 1997 and the petitioners are facing criminal proceedings since then and the petitioners are the only bread earners of their family.

Accordingly, keeping in view the submissions made by the learned counsel for the petitioners, it is a fit case where the sentence qua imprisonment is liable to be reduced to already undergone by the petitioners No. 1 to 3 and enhance the sentence qua fine.

Hence, the conviction of the petitioners under Section 323 325 IPC is maintained. However, the sentence qua the imprisonment of petitioners No. 1 to 3 is reduced to already undergone by them. The sentence qua fine is enhanced by Rs.10,000/- each. The additional fine of Rs.10,000/- each deposited by the petitioners be released to injured Manoj. Petitioners No. 1 to 3 are directed to deposit the additional fine within two months from today failing which the petition shall stand dismissed.

Petition stands disposed of accordingly.

(Sabina)
Judge

April 07, 2010
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